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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MEGAN WHITE; JERONIMO AGUILAR;  
LOREN WAYNE KIDD; LYRIC NASH;  
NICOLLETTE JONES; and ODETTE  
ZAPATA,

Plaintiffs,

vs.

SACRAMENTO POLICE DEPARTMENT;  
THE CITY OF SACRAMENTO; DANIEL  
HAHN; and DOES 1-200 (the names and  
numbers of which are currently unknown),

Defendants.

Case No.: 2:21-cv-02211-JAM-DB

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
THE FIRST AMENDED COMPLIANT  
COMPLAINT

Date: April 19, 2022  
Time: 1:30 p.m.  
Courtroom: 6, 14<sup>th</sup> Floor  
Judge: Hon. John A. Mendez

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Pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. Rule 8, Defendants City of Sacramento and Chief Daniel Hahn (Ret.) (collectively Defendants), through their undersigned counsel, respectfully move this Court to dismiss the First Amended Complaint (FAC) of Megan White, Jeronimo Aguilar, Loren Wayne Kidd, Lyric Nash, Nicollette Jones, and Odette Zapata (collectively Plaintiffs) as the FAC fails to comply with the “short and plain” requirement of Rule 8 and the FAC fails to state a claim upon which relief can be granted. In the alternative, Defendants move to strike portions of the FAC as immaterial pursuant to Fed. R. Civ. P. 12(f).

I

## INTRODUCTION AND FACTUAL BACKGROUND

Six individual Plaintiffs filed their FAC, alleging damages stemming from multiple, separate and distinct events that occurred between March 2020 through September 2021. The FAC consists of 43 pages and 11 causes of action. The first ten causes of action are brought by all Plaintiffs against all the Defendants.<sup>1</sup> The first six causes of action are brought under federal law and the next four causes of action allege State law violations.

The FAC takes a shotgun approach by lumping allegations from all Plaintiffs that are only loosely related; the allegations involve actions of the Sacramento Police Department (SPD). Paragraphs 27 through 41 fails to set forth any facts or allegations pertaining to the six named Plaintiffs. Rather, the paragraphs discuss events, protests and counter protests that occurred during the 2020 and 2021, including the death of George Floyd and the attack on the United States Capitol Building on January 6, 2021. ECF No. 4, FAC ¶¶ 27 – 41. The next 80 paragraphs are a shotgun approach of pleading in an attempt to support the causes of action alleged. See *Id.* at ¶¶ 42 – 122. The FAC then consists of conclusory statements in an attempt to support a pattern of discrimination, conspiracy, unlawful police practices and deliberate indifference by the Defendants. See *Id.* at ¶¶ 123 – 172. Finally, the FAC reaches the causes of action. Other than the headings and subheadings for each cause of action, the language used to plead the causes of action are nearly identical and vague. See *Id.* at ¶¶ 173 – 237. Finally, there is a cause of action for violation of the ADA. See *Id.* at ¶¶ 238 – 243.

<sup>1</sup> The Eleventh Cause of Action under the American Disabilities Act is only alleged by Plaintiff Kidd.

1 Plaintiff White alleges that she witnessed racial justice protests and attempted to provide  
2 basic first aid to protest participants in 2020 and 2021. ECF No. 4, FAC ¶ 17. Plaintiff White  
3 further alleges that she was injured during protests, suffering bruising, chronic knee pain and  
4 hip pain, chemical burns, and a shoulder injury. *Id.* Finally, Plaintiff White alleges she observe  
5 law enforcement restrain and assault racial justice protesters. *Id.* Plaintiff White alleges that she  
6 complied with the Government Claims Act. *Id.*

7 Plaintiff Aguilar alleges that he attended protests in May and June 2020 and that he became  
8 a target of surveillance and an illegal raid of his home was conducted. ECF No. 4, FAC ¶ 18.  
9 Plaintiff Aguilar did not allege that he complied with the Government Claims Act. *Id.*

10 Plaintiff Kidd alleges he was shot with non-lethal devices and was shoved into and over  
11 parked cars during protests. ECF No. 4, FAC ¶ 19. Further, Plaintiff Kidd alleges the SPD  
12 failed to accommodate his disability when he was arrested, and the SPD observed white  
13 supremacist groups attack Plaintiff Kidd and the SPD failed to intervene. *Id.* Plaintiff Kidd  
14 alleges that he complied with the Government Claims Act. *Id.*

15 Plaintiff Nash alleges that she was the target of verbal harassment and threats. ECF. No.  
16 4, FAC ¶ 20. Plaintiff Nash also alleges she was a member of crowds when non-lethal devices  
17 were used, including pepper balls, foam-tipped bullets, and beanbag rounds. *Id.* Plaintiff Nash  
18 did not allege that she complied with the Government Claims Act. *Id.*

19 Plaintiff Jones alleges that she participated in demonstrations in Sacramento, and she was  
20 known by name by SPD and was a target at protests. ECF No. 4, FAC ¶ 21. In May 2020,  
21 Plaintiff Jones alleges that a teargas canister was kicked in her direction, and she was hit by  
22 impact munitions at least 11 times. *Id.* Plaintiff Jones did not allege that she complied with the  
23 Government Claims Act. *Id.*

24 Plaintiff Zapata alleges she attended multiple protests and that she witnessed law  
25 enforcement's pattern of violent escalation against protesters, while white supremacists were  
26 allowed to be violent against community members. ECF No. 4, FAC ¶ 22. Plaintiff Zapata also  
27 alleges that she has been the subject of aerial surveillance. *Id.* Plaintiff Zapata did not allege she  
28 has complied with the Government Claims Act. *Id.*

## II

## APPLICABLE LEGAL STANDARDS

A Motion to Dismiss per Fed. R. Civ. P. 12(b)(6) is proper where there is either a “lack of a cognizable legal theory,” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Ballister v. Pacifica Police Dept.*, (9th Cir. 1990) 901 F.2d 696, 699; *Navarro v. Block*, (9th Cir. 2001) 250 F.3d 729, 732. Specifically, the Court must construe the complaint in the light most favorable to the plaintiff; accept all well-pleaded factual allegations and true; and determine whether plaintiff can prove any set of facts to support a claim that would merit relief. *Cahill v. Liberty Mutual Ins.*, (9th Cir. 1996) 80 F.3d 336, 337-338. However, a district court is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, (9th Cir. 2008) 536 F.3d 1049, 1055.

“[F]or a Complaint to survive, the conclusory ‘factual content’ and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Services*, (9th Cir. 2009) 572 F.3d 962, 969, quoting, *Ascroft v. Iqbal*, (2009) 556 U.S. 662, 677-678 (“*Iqbal*”). “Threadbare recitals of the elements of a cause of action supported by mere conclusory statements do not suffice.” *Iqbal*, *supra*, 556 U.S. 662, 678. Determining whether a complaint survives a motion to dismiss for failure to state a claim is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

## III

## ARGUMENT

A. Failure to Allege Compliance with The Government Claims Act Is Fatal to the State Law Claims for Plaintiffs Aguilar, Nash, Jones, and Zapata

Claims for damages under the Federal Civil Rights Act, 42 U.S.C. § 1983 need not comply with the Government Claims Act. However, joint causes of action in Federal Court based upon state tort claims are subject to dismissal under the claims filing requirements of the California Government Claims Act. *Karim Panahi v. Los Angeles Police Dept.*, (9th Cir. 1988) 839 F.2d 621,



627. In this case, all Plaintiffs are required to comply with the Government Claims Act with regard the State law claims - causes of action seven, eight, nine and ten.

As a condition precedent to a suit against a public entity or public employee for acts in the course and scope of employment, the Government Claims Act requires the timely presentation of a written claim for money or damages and the rejection of the claim. *See* generally for filing requirements, Cal. Government Code §§ 905, 905.2, 910, 911.2, 911.4, 945, 950.2; *see* for rejection requirements, Cal. Government Code § 945.4 (rejection of claim against public entity), § 950.6(a) (rejection of claim against public employee).

Government Code § 945.4 provides in relevant part as follows:

. . . no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . . . .

Government Code § 950.2 provides in relevant part as follows:

...a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred...

Government Code § 950.6 provides in relevant part as follows:

When a written claim for money or damages for injury has been presented to the employing public entity:

(a) A cause of action for such injury may not be maintained against the public employee or former public employee whose act or omission caused such injury until the claim has been rejected, or has been deemed to have been rejected, in whole or in part by the public entity.

California courts have consistently found that compliance with the claims requirements is a condition precedent for an action against a public entity or its employee acting in the course and scope of employment. *Williams v. Horvath*, (1976) 16 Cal.3d 834, 842 (the filing of a claim is more than procedural requirement, it is a condition precedent to maintaining action against defendants, "in short an integral part of plaintiff's cause of action"); *City of San Jose v. Superior Court*, (1974) 12 Cal.3d 447, 454 (claim against public entity); *Massa v. Southern California Rapid Transit Dist.*, (1996) 43 Cal.App.4th 1217, 1222 (rejection of claim is prerequisite to filing suit against public employee).

Government Code § 950.2 has been interpreted to require that prior to the initiation of a lawsuit against a public employee for acts within that employee's scope of employment, the plaintiff must comply with Government Code § 900, *et seq. Massa v. So. Cal. Rapid Transit Dist., supra*, 43 Cal.App.4<sup>th</sup> at 1222; *Fowler v. Howell*, (1996) 42 Cal.App.4<sup>th</sup> 1746, 1750-1751; *Briggs v. Lawrence*, (1991) 230 Cal.App.3d 605, 612-613 (the Act requires that one who sues a public employee on the basis of acts or omissions in the scope of his employment must file a claim with public entity employer); *Mazzola v. Feinstein*, (1984) 154 Cal.App.3d 305, 310 (filing a timely claim against the employing public entity is a condition precedent to tort action against public entity or the employee).

"Public employee" is defined as "an employee of the public entity." Cal. Gov. Code § 811.4. An employee is acting within the scope of his or her employment "when he is engaged in work he was employed to perform or when an act is incident to his duty and was performed for the benefit of his employer and not to serve his own purpose." *Fowler v. Howell, supra*, 42 Cal.App.4<sup>th</sup> at 1750-1751.

Pursuant to Government Code § 911.2, a claim relating to a cause of action for personal injury must be presented no later than six months after accrual of the cause of action. Pursuant to Government Code § 911.4, when a claimant fails to present a claim within the six-month timeframe, a written application may be made to the public entity for leave to present the claim within a reasonable time not to exceed one year from the accrual of the cause of action.

Further, a plaintiff must allege either they "complied with the claims presentation requirement, or that a recognized exception or excuse for noncompliance exists," and if the plaintiff fails to include the necessary allegations, the "complaint is subject to attack by demurrer." *Gong v. City of Rosemead*, (2014) 226 Cal.App.4<sup>th</sup> 363, 374.

In this case, only two of the Plaintiffs, White and Kidd, have alleged they have complied with the Government Claims Act. However, the four State law causes of action are brought by all six Plaintiffs. Because Plaintiffs Aguilar, Nash, Jones and Zapata failed to allege compliance with the Government Claims Act, causes of action seven, eight, nine and ten must be dismissed as to Plaintiffs Aguilar, Nash, Jones and Zapata.

1 B. The Shotgun Pleading of the FAC Violates Federal Rule of Civil Procedure 8

2 Rule 8 requires the complaint to contain “a short and plain statement of the claim showing  
3 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Under the holdings of the Supreme  
4 Court in *Iqbal* and *Bell Atlantic Corp. v. Twombly*, (2007) 550 U.S. 544 (“*Twombly*”), plaintiffs  
5 must do more than merely state that the law has been violated-plaintiffs must plead sufficient  
6 facts to show that it has a plausible claim for relief. Further, “shotgun pleading” is frowned  
7 upon by the courts. “Shotgun pleadings are pleadings that overwhelm defendants with an  
8 unclear mass of allegations and make it difficult or impossible for defendants to make informed  
9 responses to the plaintiff’s allegations. They are unacceptable.” *McLaughlin v. Castro*, (E.D. Cal.  
10 2018) 2018 WL 1726630. See also *Barnes v. AstraZeneca Pharmaceuticals LP*, (N.D. Ga. 2017) 253  
11 F.Supp.3d 1168 [“A complaint is a shotgun complaint where it is virtually impossible to know  
12 which allegations of fact are intended to support which claim(s) for relief”].

13 The original complaint was filed on behalf of Plaintiff White only. See ECF No. 1.  
14 However, between the original complaint and the FAC, five Plaintiffs were added and the FAC  
15 more than doubled in length. The FAC attempts to tie together separate and distinct fact  
16 patterns in support of eleven causes of action. The Plaintiffs had separate interactions with SPD  
17 over the course of approximately 16 months. From the 43-page FAC it is nearly impossible to  
18 discern which allegations are conclusions or are merely grievances with SPD, rather than facts  
19 to support causes of action.

20 The FAC is neither short nor plain. It is impossible for the Defendants to determine which  
21 factual allegations are intended to support the claims for relief and therefore the motion to  
22 dismiss should be granted.

23 C. Plaintiffs Nash and Zapata’s Causes of Action Pursuant to 42 U.S.C 1983 Should be  
24 Dismissed for Failure to State a Claim

25 A municipality can only be held liable under 42 U.S.C. § 1983 if “action pursuant to official  
26 policy of some nature caused a constitutional tort.” *Monell v. Dept. of Soc. Servs.*, (1978) 436 U.S.  
27 658, 694 (municipality may be liable when execution of a government’s policy or custom inflicts  
28 the injury) *Whitaker v. Garcetti*, (9<sup>th</sup> Cir. 2007) 486 F.3d 572, 581. A plaintiff seeking to establish

1 *Monell* liability must prove both that he suffered a violation of a recognized federal right and  
 2 also that the municipality's actions caused that violation. *City of Los Angeles v. Heller*, (1986) 475  
 3 U.S. 796, 799; *Gillette v. Delmore*, (9<sup>th</sup> Cir. 1992) 979 F.3d 1342, 1346-1347. Liability for an  
 4 improper custom may not be predicated on isolated or sporadic incidents. *Trevino v. Gates*, (9<sup>th</sup>  
 5 Cir. 1996) 99 F.3d 911, 918. Plaintiff must specifically identify the policy and set forth evidence  
 6 showing that such policy actually existed and was causally related to the alleged violation. *Lake*  
 7 *Nacimiento Ranch Co. v. San Luis Obispo County* (9<sup>th</sup> Cir. 1987) 841 F.2d 872, 878. There must be  
 8 a causal link between a municipal policy or custom and the alleged constitutional deprivation.  
 9 *City of Canton, Ohio v. Harris*, (1989) 489 U.S. 378, 385.

10 Where the alleged policy by its terms violates the constitutional rights of persons similarly  
 11 situated to plaintiff, "only one application of the policy [is necessary] to satisfy *Monell*'s  
 12 requirement that a municipal corporation be held liable only for constitutional violations  
 13 resulting from the municipality's official policy." *Oklahoma City v. Tuttle*, (1985) 471 U.S. 808,  
 14 822. However, where the alleged policy is not unconstitutional on its face, then "considerably  
 15 more proof than the single incident will be necessary in every case to establish both the requisite  
 16 fault on the part of the municipality and the causal connection between the policy and the  
 17 constitutional deprivation." *Id.* at 824.

18 Plaintiff Nash alleges that she has overheard police describe the clothing she is wearing  
 19 (ECF No. 4, FAC ¶ 105), was in a crowd where non-lethal weapons were utilized (*Id.* at ¶ 61),  
 20 observed officers "rush" participants at a vigil for George Floyd (*Id.* at ¶¶ 63 & 64), was in her  
 21 vehicle when officers audibly read and wrote down her license plate number (*Id.* at ¶¶ 102 &  
 22 103), and was a passenger in a vehicle that was pulled over by the police (*Id.* at ¶ 104). Plaintiff  
 23 Zapata alleges that she was part of a crowd where tear gas was used (*Id.* at ¶¶ 51 – 55), witnessed  
 24 Proud Boys break police barriers in view of SPD and the police arrested bystanders, not the  
 25 Proud Boys (*Id.* at ¶¶ 81 & 82), and has been the target of surveillance by drones (*Id.* at ¶¶ 98 –  
 26 101).

27 Even accepting the allegations of Plaintiffs Nash and Zapata as true, there are no facts  
 28 which indicate there has been a violation of a recognized federal right. Therefore, causes of

1 action one, two, three and four should be dismissed as to Plaintiffs Nash and Zapata.

2 D. The Causes of Action for Conspiracy Pursuant to 42 U.S.C 1985 and 42 U.S.C. 1986  
 3 Should be Dismiss for Failure to State a Claim

4 To state a claim for federal conspiracy, “a complaint must allege that the defendants did  
 5 (1) ‘conspire or go in disguise on the highway or on the premises of another’ (2) ‘for the purpose  
 6 of depriving, either directly or indirectly, any person or class of persons of the equal protection  
 7 of the laws, or of equal privileges and immunities under the laws.’ It must then assert that one  
 8 or more of the conspirators (3) did, or caused to be done, ‘any act in furtherance of the object  
 9 of (the) conspiracy,’ whereby another was (4a) ‘injured in his person or property’ or (4b)  
 10 ‘deprived of having and exercising any right or privilege of a citizen of the United States.” *Griffin*  
 11 *v. Breckenridge*, (1971) 403 U.S. 88, 102-103.

12 Plaintiffs’ FAC pleads only general conclusions that other law enforcement agencies  
 13 provided crowd control in Sacramento. ECF No. 4, FAC ¶ 134. The FAC goes on to allege that  
 14 a California Highway Patrol officer recommended a black journalist be charged with disturbing  
 15 the peace after the journalist was stabbed at a white nationalist event and that other officers  
 16 conducted aerial surveillance to track individuals who participated in racial justice protests. See  
 17 *Id.* at ¶¶ 135 & 136. The FAC also alleges that Sacramento County Sheriff deputies targeted  
 18 racial justice protestors and that deputy sheriffs took part in the January 6, 2021, attack at the  
 19 United States Capitol. See *Id.* at ¶¶ 137 & 138. Plaintiffs further allege that the “[d]efendants  
 20 agreed among themselves and with other individuals to act in concert in order to deprive  
 21 Plaintiffs of their constitutional rights ...” and [i]n furtherance of the conspiracy Defendants  
 22 engaged in and facilitated numerous over acts as described above.” *Id.* at ¶¶ 202 & 203.

23 The allegations in the FAC are conclusory and fail to demonstrate any conspiracy. Without  
 24 any further facts, the allegations fail to give rise to conspiracy pursuant to 42 U.S.C. § 1985 and  
 25 therefore the fifth cause of action for civil rights conspiracy should be dismissed in its entirety.

26 As “there can be no valid claim under § 1986 of neglect to prevent a known conspiracy, in  
 27 the absence of a conspiracy under § 1985” the sixth cause of action must also be dismissed.  
 28 *Suzuki v. County of Contra Costa* (N.D. Cal. 2019) 2019 WL 2247829, \*6.

1 E. The Court Should Strike Portions of the FAC

2 Fed. R. Civ. P. 12(f) authorizes the District Court to strike any portion of a complaint that  
3 a "redundant, immaterial, impertinent or scandalous." F.R.C.P., Rule 12(f))

4 "(T)he function of a 12(f) motion to strike is to avoid the expenditure of time and money  
5 that must arise from litigating spurious issues by dispensing with those issues prior to trial. . . ."  
6 *Sidney-Vinstein v. A.H. Robins Co.*, (9th Cir. 1983) 697 F.2d 880, 885. "'Immaterial' matter is that  
7 which has no essential or important relationship to the claim for relief or the defenses being  
8 pleaded." (5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure section  
9 1382, at 706-07 (1990).) "'Impertinent' matter consists of statements that do not pertain, and are  
10 not necessary, to the issues in question." *Id.* at 711.

11 The FAC is replete with immaterial and impertinent paragraphs. Paragraphs 1 through 10  
12 are immaterial to the allegations of the six Plaintiffs. Rather the paragraphs are designed to  
13 invoke an emotion response from the reader. Paragraphs 28 through 41 are also immaterial and  
14 impertinent as the paragraphs are conclusory or discuss generalities and are therefore  
15 immaterial to the allegations of the six Plaintiffs. Finally, paragraphs 123 through 133 attribute  
16 statements to Sacramento public figures in an effort to persuade the reader of the validity of  
17 Plaintiffs' allegations and note the City's settlements in prior lawsuits. These paragraphs are  
18 immaterial, impertinent, seek to invoke an emotional response from the reader, and are  
19 prejudicial.

20 Because the paragraphs identified above are immaterial, they should be stricken from the  
21 FAC.

22 F. The Court Should Require Plaintiffs to Provide a More Definite Statement

23 Alternatively, the Court should issue an order requiring Plaintiffs further amend their FAC  
24 pursuant to Fed. R. Civ. P. 12(e). Rule 12(e) provides, in relevant part, that "[i]f a pleading . . .  
25 is so vague or ambiguous that a party cannot reasonably be required to frame a responsive  
26 pleading, the party may move for a more definite statement." F.R.C.P. Rule 12(e), see also  
27 *Famolare, Inc. v. Edison Bros. Stores, Inc.*, (E.D. Cal. 1981) 525 F.Supp.940, 949 [explaining that  
28 a motion for a more definite statement is proper when the complaint is so indefinite that the

1 defendant cannot reasonably be expected to prepare a response].) The lengthy shotgun FAC  
2 does not allow the Defendants to properly frame a responsive pleading. While Defendants urge  
3 the Court to dismiss the FAC in its entirety, should the Court decline to exercise its authority  
4 to do so, at a minimum, Plaintiffs should be required to further amend their FAC to provide a  
5 more definite statement of their claims.

6 IV

7 CONCLUSION

8 For the reasons set forth above, the Defendants respectfully requests the Court grant the  
9 City's motion and enter an order dismissing this action.

10 DATED: February 16, 2022

SUSANA ALCALA WOOD,  
City Attorney

11  
12  
13 By: /s/ MATTHEW R. DAY

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